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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of	:	Customer Number: 46320
	:	
Michael AU, et al.	:	Confirmation Number: 3098
	:	
Application No.: 10/751,742	:	Group Art Unit: 3625
	:	
Filed: January 5, 2004	:	Examiner: J. Dunham
	:	
For: SUPPLIER HUB WITH HOSTED SUPPLIER STORES	:	

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Appeal Brief is submitted in support of the Notice of Appeal filed December 6, 2007, wherein Appellants appeal from the Examiner's rejection of claims 1-20.

I. REAL PARTY IN INTEREST

This application is assigned to IBM Corporation by assignment recorded on January 5, 2004, at Reel 014878, Frame 0149.

II. RELATED APPEALS AND INTERFERENCES

Appellants are unaware of any related appeals and interferences.

III. STATUS OF CLAIMS

Claims 1-20 are pending and two-times rejected in this Application. Claims 21-25 have been cancelled. It is from the multiple rejections of claims 1-20 that this Appeal is taken.

IV. STATUS OF AMENDMENTS

The claims have not been amended subsequent to the imposition of the Second and Final Office Action dated September 6, 2007 (hereinafter the Second Office Action).

V. SUMMARY OF CLAIMED SUBJECT MATTER

Referring to Figures 1 and 6 also to independent claims 1 and 7, a method (and computer program for implementing thereof) of creating a marketplace with hosted supplier stores is disclosed. Tools for creating and managing a hosted supplier store 24 are provided to each of a plurality of suppliers 20 through a commerce site (page 6, lines 24-26; page 17, lines 17-19), the tools include a catalog facility for uploading and managing a supplier catalog for the hosted supplier store 24 (page 18, lines 13-16). A plurality of supplier catalogs are received from the plurality of suppliers 14, and the plurality of supplier catalogs are aggregated into an aggregated catalog 30 (page 19, lines 11-14). A buyer 12 is provided with access to the aggregated catalog 30 and separate access to at least one of the plurality of supplier catalogs on the commerce site (page 6, lines 21-26; page 19, lines 18-20).

Referring to Figures 1 and 3 and also to independent claim 13, a system for online commerce between multiple buyers and multiple suppliers is disclosed. The system includes a member subsystem 204, a database, a catalog subsystem 202, and an application server. The member subsystem 204 registers buyers 12 and suppliers 22 (page 12, lines 13-17). The

1 registered buyers 12 are permitted to access the system for online commerce, and the registered
2 suppliers 20 are permitted to access the system to create and manage a hosted supplier store 24
3 (page 18, lines 1-2). The database stores a plurality of supplier catalogs uploaded by the
4 registered suppliers 20 for a plurality of the hosted supplier stores 24 (page 10, lines 4-5). The
5 catalog subsystem 202 aggregates the plurality of supplier catalogs into an aggregated catalog 30
6 (page 10, lines 1-10). The application server provides the registered buyers 12 with access to the
7 aggregated catalog 30 and separate access to at least one of the plurality of supplier catalogs on
8 the commerce site (page 6, lines 21-26).

9 Referring to Figures 1 and 4 and also to independent claim 19, an online marketplace 18
10 for commerce between multiple buyers 12 and multiple suppliers 14 is disclosed. The online
11 marketplace includes a plurality of hosted supplier stores 24, an aggregated catalog 30, trading
12 mechanism, a supplier hub 28, and a supplier store 24. The plurality of hosted supplier stores 24
13 are each managed by a respective registered supplier 20 (page 11, lines 1-2), and the hosted
14 supplier stores 24 each include a supplier catalog containing a hierarchy of categories, products,
15 and saleable items uploaded by the respective registered supplier 20 (page 6, lines 21-26). The
16 aggregated catalog 30 contains a hierarchy of categories, products, and items that includes an
17 aggregation of the supplier catalogs (page 12, lines 1-7). The trading mechanisms include item
18 ordering and requests for quotations for items (page 7, lines 7-11). A registered buyer 12,
19 through the supplier hub 28, browses the aggregated catalog 30 and utilizes the trading
20 mechanisms (page 7, lines 11-15). The registered buyer 12, through the supplier store 24,
21 browses the supplier catalog (page 19, lines 18-20).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 1-3, 6-9, 12-15, and 18-20 were rejected under 35 U.S.C. § 102 for anticipation based upon Haynes et al., U.S. Patent Publication No. 2006/0218052 (hereinafter Haynes); and

2. Claims 4-5, 10-11, and 16-17 were rejected under 35 U.S.C. § 103 for obviousness based upon Haynes in view of Flaxer et al., U.S. Patent Publication No. 2003/0033218 (hereinafter Flaxer).

VII. ARGUMENT

**THE REJECTION OF CLAIMS 1-3, 6-9, 12-15, AND 18-20 UNDER 35 U.S.C. § 102 FOR
ANTICIPATION BASED UPON HAYNES**

For convenience of the Honorable Board in addressing the rejections, claims 7, 13, and 19 stand or fall together with independent claim 1; claims 8 and 14 stand or fall together with dependent claim 2; claims 9 and 15 stand or fall together with dependent claim 3; and claims 12 and 18 stand or fall together with dependent claim 6.

As is evident from Appellants' previously-presented comments during prosecution of the present Application and from Appellants' comments below, there are questions as to how the limitations in the claims correspond to features in the applied prior art. In this regard, reference is made to M.P.E.P. § 1207.02, entitled "Contents of Examiner's Answer." Specifically, the following is stated:

(A) CONTENT REQUIREMENTS FOR EXAMINER'S ANSWER. The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

...

(9)(e) For each rejection under 35 U.S.C. 102 or 103 where there are questions as to how limitations in the claims correspond to features in the prior art even after the examiner complies with the requirements of paragraphs (c) and (d) of this section, the examiner must compare at least one of the rejected claims feature by feature with the prior art relied on in the rejection. The comparison must align the language of the claim side-by-side with a reference to the specific page, line number, drawing reference number, and quotation from the prior art, as appropriate. (emphasis added)

Therefore, if the Examiner is to maintain the present rejections and intends to file an Examiner's Answer, the Examiner is required to include the aforementioned section in the Examiner's Answer.

1 The factual determination of anticipation under 35 U.S.C. § 102 requires the identical
2 disclosure, either explicitly or inherently, of each element of a claimed invention in a single
3 reference.¹ Moreover, the anticipating prior art reference must describe the recited invention
4 with sufficient clarity and detail to establish that the claimed limitations existed in the prior art
5 and that such existence would be recognized by one having ordinary skill in the art.² As part of
6 this analysis, the Examiner must (a) identify the elements of the claims, (b) determine the
7 meaning of the elements in light of the specification and prosecution history, and (c) identify
8 corresponding elements disclosed in the allegedly anticipating reference.³ This burden has not
9 been met.

10
11 Moreover, the Examiner has failed to clearly designate the teachings in Haynes being
12 relied upon the statement of the rejection. In this regard, the Examiner's rejection under 35
13 U.S.C. § 102 also fails to comply with 37 C.F.R. § 1.104(c), which reads:

14 In rejecting claims for want of novelty or for obviousness, the examiner must cite the best
15 references at his or her command. When a reference is complex or shows or describes inventions
16 other than that claimed by the applicant, the particular part relied on must be designated as nearly
17 as practicable. The pertinence of each reference, if not apparent, must be clearly explained and
18 each rejected claim specified. (emphasis added)
19

20 Despite these requirements, the Examiner's statement of the rejection in the First and
21 Second Office Actions simply consists of the Examiner repeating, almost word-for-word, each of
22 the recited claims and asserting that the entire claim is disclosed by certain specified passages
23 within Haynes. The manner in which the Examiner conveyed the statement of the rejection,

¹ In re Rijckaert, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); Perkin-Elmer Corp. v. Computervision Corp., 732 F.2d 888, 894, 221 USPQ 669, 673 (Fed. Cir. 1984).

² See In re Spada, 911 F.2d 705, 708, 15 USPQ 1655, 1657 (Fed. Cir. 1990); Diversitech Corp. v. Century Steps, Inc., 850 F.2d 675, 678, 7 USPQ2d 1315, 1317 (Fed. Cir. 1988).

³ Lindermann Maschinenfabrik GMBH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984).

however, has not "designated as nearly as practicable" the particular parts in Haynes being relied upon in the rejection.

It is "practicable" for the Examiner, for each of the claimed elements, to specifically identify each feature within Haynes being relied upon to teach each of the particular claimed elements. For example, the Examiner can "specifically identify" a feature, corresponding to the claimed element, within the applied prior art by identifying a reference numeral associated with the feature. In addition to or alternatively, the Examiner may cite to a brief passage (i.e., 1 or 2 lines or even a portion of a line) within the applied prior art that identifies the feature that corresponds to the claimed element. However, merely citing a long passage or an entire paragraph to disclose a single (or multiple) claimed elements does not designate "as nearly as practicable," the particular features within Haynes being relied upon by the Examiner in the rejection.

The importance of the specificity requirement of 37 C.F.R. § 1.104(c) is evident in M.P.E.P. § 706.07, which states:

The examiner should never lose sight of the fact that in every case the applicant is entitled to a full and fair hearing, and that a clear issue between applicant and examiner should be developed, if possible, before appeal.

A clear issue, however, cannot be developed between Appellants and the Examiner where the basis for the Examiner's rejection of the claims is ambiguous. The Examiner's "analysis" provides little insight as to (i) how the Examiner is interpreting the elements of the claims and (ii) what specific features within Haynes the Examiner believes identically discloses the specific elements (and interactions between elements) recited in the claims. By failing to specifically identify those features within Haynes being relied upon in the rejection, the Examiner has

essentially extended Appellants an invitation to engage in mind reading and/or guessing to determine how the Examiner is interpreting the elements of the claims and what specific features within Haynes the Examiner believes identically disclose the claimed invention.

As noted by the Supreme Court in Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.,⁴ a clear and complete prosecution file record is important in that "[p]rosecution history estoppel requires that the claims of a patent be interpreted in light of the proceedings in the PTO during the application process." The Courts that are in a position to review the rejections set forth by the Examiner (i.e., the Board of Patent Appeals and Interferences, the Federal Circuit, and the Supreme Court) can only review what has been written in the record; and therefore, the Examiner must clearly set forth the rationale for the rejection and clearly and particularly point out those elements within the applied prior art being relied upon by the Examiner in the statement of the rejection.

Essentially, the Examiner is placing the burden on Appellants to establish that Haynes does not disclose the claimed elements based upon Appellants' interpretation of the claims and Appellants' comparison of the claims with the applied prior art. However, this shifting of burden, from the Examiner to Appellants, is premature since the Examiner has not discharged the initial burden of providing a *prima facie* case of anticipation.

Arguments similar to those presented above are found on 9 and 10 of the First Amendment dated June 18, 2007 (hereinafter the First Amendment). On pages 6 of the Second Office Action, the Examiner responded to Appellants' prior arguments as follows:

⁴ 535 U.S. 722, 122 S.Ct. 1831, 1838, 62 USPQ2d 1705, 1710 (2002).

Applicant's arguments filed June 18, 2007 have been fully considered but they are not persuasive. The examiner strongly disagrees with applicant's assertion that burden of initial examination has not been met due to insufficient indication of the relevant disclosure of the prior art. The examiner believes that the specific passages cited above in the 35 USC 102 rejection to Haynes (US 2006/0218052) clearly articulates the relevant disclosure. The cited passages of Haynes are in no way verbose or overly long and it is not necessary to reprint a line by line disclosure of the prior art in the rejection, as the prior art is readily available.

The Examiner appears to be confused as to the difference between making a rejection and explaining the rejection. As evident by the case law and the PTO's own rules (e.g., 37 C.F.R. § 1.104(c)), an explanation as to the rejection is required.

As evident by the present Appeal, Appellants and the Examiner disagree as to whether or not Haynes identically discloses the claimed invention within the meaning of 35 U.S.C. § 102. However, there can be any number of reasons why Appellants and the Examiner disagree as to whether or not a particular claimed feature is disclosed by Haynes. For example, the Examiner may have overlooked the claimed feature and did not make a determination that the claimed feature was disclosed by Haynes. Another example would be the Examiner interpreting the claim language differently than how Appellants are interpreting the claim term (i.e., differing claim constructions). Yet another example would be Appellants assuming that the Examiner is relying upon one certain element of Haynes to teach a certain claimed feature, yet the Examiner is relying upon a different element of Haynes to teach the claimed feature, which leads to a disagreement as to whether or not a particular element is identically disclosed.

Depending upon the particular issue between Appellants and the Examiner, Appellants have a variety of options to address these issues. However, by failing to clearly explain the Examiner's rejection, the reason(s) why Appellants and the Examiner disagree cannot be definitively known by Appellants, and without a clear issue having been developed between

Appellants and the Examiner, Appellants ability' to present arguments directly on point and/or amend the claims in a manner that more clearly distinguishes the claimed invention over the applied prior art is frustrated.

Claim 1

Notwithstanding the general lack of specificity of the Examiner's statement of the rejection, Appellants presented the following arguments on page 10 of the First Amendment. In the First Office Action, the Examiner cited to paragraph [0018] of Haynes to identically disclose the following claimed limitations in claim 1:

receiving a plurality of supplier catalogs from said plurality of suppliers;
aggregating said plurality of supplier catalogs into an aggregated catalog.

For ease of reference, paragraph [0018] of Haynes is reproduced below:

In another aspect of this invention, there is described a method of constructing a searchable database that stores at least one catalogue of items that may be bought by at least one buyer and are supplied by at least one supplier. The method comprises the steps of the one supplier selecting which of its items that are to be included in its catalogue, the supplier attaching to each selected item a description of that item and, then, storing each item and attached description in a database. Thus the buyer is entitled to search the catalog of items stored in the database based on the descriptions of the items.

This passage, however, is silent as to (i) a plurality of supplier catalogs; (ii) receiving the plurality of supplier catalogs; (iii) a plurality of suppliers; (iv) aggregating the plurality of supplier catalogs; and (v) an aggregated catalog.

On pages 6 and 7 of the Second Office Action, the Examiner responded to these arguments as follows:

"receiving a plurality of supplier catalogs from said plurality of suppliers," and aggregating said plurality of supplier catalogs into an aggregated catalog.

The examiner submits that the above limitations are CLEARLY disclosed as noted:

In another aspect of this invention, there is described a method of **constructing a searchable database** that stores at least one catalogue of items that may be bought by at least one buyer and **are supplied by at least one supplier** (receiving and aggregating suppliers' catalog).

(emphasis in original)

The Examiner appears to (improperly) believe that putting "CLEARLY" in caps removes all possible doubt that Haynes identically these features. Haynes describes a database that stores descriptions of items and a supplier that selects what items to be included in a catalogue. However, absent from this teaching is the "plurality of supplier catalogs from said plurality of suppliers" and "aggregating said plurality of supplier catalogs into an aggregated catalog."

Although not explicitly stated, the Examiner appears to be relying upon an inherency argument (i.e., certain of the claimed limitations could result from the teachings of Haynes). However, such a reliance upon the doctrine of inherency to disclose features not explicitly identically disclosed is misplaced. Inherency may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient to establish inherency.⁵ To establish inherency, the extrinsic evidence must make clear that the missing element must necessarily be present in the thing described in the reference, and that the necessity of the feature's presence would be so recognized by persons of ordinary skill.⁶ This burden, however, has not been met, and thus, the Examiner cannot assert that these limitations are inherently disclosed by Haynes.

⁵ In re Rijckaert, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art); In re Oelrich, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981).

⁶ Finmeccan Corp. v. ITC, 180 F.3d 1354, 51 USPQ2d 1001 (Fed. Cir. 1999); In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999); Continental Can Co. USA v. Monsanto Co., 20 USPQ 2d 1746 (Fed. Cir. 1991); Ex parte Levy, 17 USPQ2d 1461 (BPAI 1990).

On page 11 of the First Amendment, Appellants made the following observations. Part of the process of examination is to construe meanings for claimed terms. Presuming that the applied prior art does not unquestionably disclose a particular claimed limitation, the Examiner is obligated to construe a meaning for the claimed limitation and explain why a teaching of the applied prior art discloses that claimed limitation based upon the Examiner's claim construction for the claimed limitation. This analysis, however, has not been performed for any of the claim limitations.

In response, the Examiner cited a passage in M.P.E.P. § 904.01 and asserted the following on page 7 of the Second Office Action:

The examiner also strongly disagrees with applicant's contention that it is part of the examination process to construe meanings for claim terms. Terms within the claims are given their meanings based upon the applicant's specification or when they are not defined within the specification, their broadest reasonable definitions. See at least MPEP 904.01 Analysis of Claims.

As previously noted, the Examiner is confused as to the purpose of examination.

As noted by the Federal Circuit in Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.,⁷ "[i]t is a bedrock principle of patent law that the claims of a patent define the invention to which the patentee is entitled the right to exclude." As stated in 37 C.F.R. § 1.104(a)(1), "[t]he examination shall be complete with respect both to compliance of the application ... with the applicable statutes and rules and to the patentability of the invention as claimed." Thus, in order for the Examiner to properly examine "the patentability of the invention as claimed," the

⁷ 381 F.3d 1111, 1116 (Fed. Cir. 2004).

1 Examiner must first determine the "invention," which is defined by the claims. This
2 determination of the invention necessarily leads to a claim construction by the Examiner.

3
4 Thus, a properly examined patent application includes an explanation, and this
5 explanation includes claim construction(s). As quoted by the Examiner "[d]uring patent
6 examination, the claims are given the broadest reasonable interpretation consistent with the
7 specification." Implicit within this quote is the notion that the Examiner both performs the
8 patent examination and interprets the language of the claims (i.e., claim construction). If, as
9 asserted by the Examiner, that the examination process does not include claim construction, then
10 Appellants are unclear as to how the claims can be given their broadest reasonable interpretation
11 consistent with the specification by the Examiner.

12
13
14 In the paragraph spanning pages 11 and 12, Appellants further argued the following.
15 Appellants are presuming that the Examiner is intending to argue that the searchable database
16 corresponds to the claimed catalog. However, a searchable database does not identically disclose
17 the claimed catalog. A searchable database may be a tool that a user can use in conjunction with
18 a catalog. However, a database and a catalog are not identical. A catalog is a list of items that
19 are accessible by a user, as a list. A database, however, is not necessarily accessible by a user, as
20 a list of items. Given the ordinary and customary meaning of the term "catalog," the database of
21 Haynes fails to teach this limitation.

The Examiner's response to this argument is found in the paragraph spanning pages 7 and 8 of the Second Office Action and reproduced below:

For example, applicant argues that a database and catalog are not identical because "a catalog is list of items that are accessible by a user, as a list (and) a database, however, is not necessarily accessible by a user, as a list of items." This argument is refuted on two counts as the examiner can find no disclosure of a "list of items" with applicant's specification and paragraph 18 of Haynes clearly defines the searchable database (aggregated catalog) to consist of catalogues of items supplier [sic] by at least one supplier.

The Examiner's first instance of refuting involves the Examiner asserting that "the examiner can find no disclosure of a 'list of items' with applicant's specification." In response, Appellants are unclear as to why the Examiner's assertion that "a list of items" is not disclosed in Appellants' specification has any bearing on the validity of Appellants' prior arguments. By way of example, suppose Appellants had put forth a claim construction that a claimed "bicycle" includes two wheels yet the explicit disclosure of "two wheels" is absent from the specification. Such an absence does not affect the validity of Appellants' claim construction. The following dictionary definitions are found for catalog:⁸

1: list register

2a: a complete enumeration of items arranged systematically with descriptive details b: a pamphlet or book that contains such a list c: material in such a list.

Thus, Appellants' prior characterization of a catalog as a "list of items" is entirely consistent with the broadest reasonable meaning of the term "catalog."

The Examiner's second instance of refuting involves the Examiner asserting that "Haynes clearly defines the searchable database (aggregated catalog) to consist of catalogues of items supplier [sic] by at least one supplier." However, completely absent from the Examiner cited

⁸ <http://www.m-w.com/dictionary/catalog>.

paragraph [0018] is any discussion of catalogs (i.e., a plurality of catalogs). Instead, the Examiner's cited passage only refers to a single "catalog of times stored in the database."

On page 12 of the First Office Action, Appellants also noted that claims 1, 7, 13, and 19 were amended to clarify that a user is able to access a supplier catalog, which is separate from the aggregated catalog. This limitation is neither taught nor suggested by Haynes. On page 3 of the Second Office Action, the Examiner cited a passage in paragraph [0047], which states that "[s]uch an interface permits a buyer to search a catalogue of products and/or services of a particular supplier." However, absent from this passage and the Examiner's analysis is an identification of a user being capable of accessing two separate catalogs, one catalog being the aggregated catalog and the second catalog being a supplier catalog.

Claim 2

Dependent claim 2 recites the following limitations:

providing a supplier hub catalog topology; and
wherein said step of aggregating includes aggregating said supplier catalogs according to said supplier hub catalog topology.

To teach these limitations, the Examiner cited Figure 1 and paragraph [0089]. Appellants, however, are unclear as to the relevance of Figure 1 of Haynes, since Figure 1 does not show multiple supplier catalogs or that the aggregated catalog is aggregated according to a supplier hub catalog topology. Paragraph [0089] is also silent as to multiple supplier catalogs. Instead,

this paragraph describes the actions of a single supplier. As such, Appellants are unclear as to how this passage teaches the claimed supplier hub catalog topology and how the aggregated catalog is aggregated according to the supplier hub catalog topology.

Claim 3

On page 3 of the Office Action, the Examiner relied upon paragraph [0048] to teach "said buyer accesses said aggregated catalog through one of said hosted supplier stores owned by one of said suppliers." For ease of reference, paragraph [0048] is reproduced below:

As shown in FIG. 1, each of the buyers' terminals 16 and each of the vendors' or suppliers' terminals 14 is coupled to a web server 20, which in one illustrative embodiment of this invention may take the form of a Microsoft Internet information server. In particular the server 20 is programmed to manage a buyer site 22a and a vendor or supplier site 22b. In particular, the buyer site 16 generates and transmits certain web pages or screens to a selected one of the buyer terminals 16. The buyer screens are shown in FIG. 3 and facilitate, in a general sense, each buyer to conduct a search for at least one, particular product and/or service, to obtain if needed further information about the preliminarily chosen product or service, to combine with a further marking such as a trademark, logo or the like if needed, and to place an order, which is transmitted through an interface to that vendor of the selected product or service.

Referring to Fig. 1, the buyer (i.e., presumably feature 16) accesses information via the buyer site 22a. However, Appellants are unclear where Haynes teaches that the buyer site is "owned by one of said suppliers," as claimed.

The Examiner's response to this argument is found in the first full paragraph on page 8 of the Second Office Action and reproduced below:

The examiner further disagrees with applicant's contention that Haynes does not teach hosted supplier stores owned by said suppliers. Figure 1 and paragraph 48 of Haynes disclose vendor and supplier sites. Applicant's specification does not specifically define "stores" and "owned" and as such the terms are given their broadest reasonable meanings. It is well known within the art that supplier "stores" are web sites and since the sites (22b) are defined as "vendor sites" ownership is indicated.

1 The Examiner's response is predicated upon an inaccurate characterization of Appellants' original
2 argument, which was that the Examiner's cited passage fails to teach "said buyer accesses said
3 aggregated catalog through one of said hosted supplier stores owned by one of said suppliers."
4 This limitation contains considerably more limitations than "hosted supplier stores owned by
5 said suppliers," as alleged by the Examiner.

6
7 The Examiner references vendor site 22B, and Appellants concede that this site could be
8 owned by one of the suppliers. However, absent from the Examiner's analysis is the
9 identification, within Haynes, of a teaching that the buyer (i.e., feature 16) accesses the alleged
10 aggregated catalog through the vendor site 22B. Thus, Appellants maintain the argument that the
11 Examiner has failed to establish that Haynes identically disclosing all of the claimed features
12 recited in claim 3.

13
14 Appellants further note that claim 3 recites "said supplier catalogs include shared
15 marketplace products and supplier-specific products" for which the Examiner cited paragraphs
16 [0089]-[0090] of Haynes as teaching these limitation. However, upon reviewing these passages,
17 Appellants are unclear as to exactly what features identically disclose the claimed "shared
18 marketplace products" and the "supplier-specific products."

19
20
21 Claim 6

22 Dependent claim 6, in part, recites "developing requests for quotations for made-to-order
23 items" for which the Examiner cited paragraph [0059] as teaching these limitations. However,

upon reviewing this cited paragraph, Appellants are unclear as to exactly what features identically disclose the claimed "made-to-order items."

THE REJECTION OF CLAIMS 4-5, 10-11, AND 16-17 UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS BASED UPON HAYNES IN VIEW OF FLAXER

For convenience of the Honorable Board in addressing the rejections, claims 4-5, 10-11, and 16-17 stand or fall together with independent claim 1.

Claims 4-5, 10-11, and 16-17 respectively depend from independent claims 1, 7, and 13, and Appellants incorporate herein the arguments previously advanced in traversing the imposed rejection of claims 1, 7 and 13 under 35 U.S.C. § 102 for anticipation based upon Haynes. The secondary reference to Flaxer does not cure the argued deficiencies of Haynes. Accordingly, even if the claimed invention were combined in the manner suggested by the Examiner, the proposed combination of references would not yield the claimed invention. Therefore, Appellants respectfully submit that the imposed rejection of claims 4-5, 10-11, and 16-17 under 35 U.S.C. § 103 for obviousness based upon Haynes in view of Flaxer is not viable

Conclusion

Based upon the foregoing, Appellants respectfully submit that the Examiner's rejections under 35 U.S.C. §§ 102, 103 based upon the applied prior art is not viable. Appellants, therefore, respectfully solicit the Honorable Board to reverse the Examiner's rejections under 35 U.S.C. §§ 102, 103.

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To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due under 37 C.F.R. §§ 1.17, 41.20, and in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

Date: February 6, 2008

Respectfully submitted,

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CUSTOMER NUMBER 46320

VIII. CLAIMS APPENDIX

1. A method of creating a marketplace with hosted supplier stores comprising the steps of:

providing tools for creating and managing a hosted supplier store to each of a plurality of suppliers through a commerce site, said tools including a catalog facility for uploading and managing a supplier catalog for said hosted supplier store;

receiving a plurality of supplier catalogs from said plurality of suppliers;

aggregating said plurality of supplier catalogs into an aggregated catalog; and

providing a buyer with access to said aggregated catalog and separate access to at least one of said plurality of supplier catalogs on said commerce site.

2. The method of claim 1, further including:

providing a supplier hub catalog topology; and

wherein said step of aggregating includes aggregating said supplier catalogs according to said supplier hub catalog topology.

3. The method of claim 1, wherein:

said supplier catalogs include shared marketplace products and supplier-specific products;

said buyer accesses said aggregated catalog through one of said hosted supplier stores owned by one of said suppliers; and

said step of aggregating includes aggregating said shared marketplace products from all of said suppliers with said supplier-specific products from said one of said suppliers.

4. The method of claim 1, further including:

receiving contract data from one of said suppliers, said contract data including entitlement information for said buyer in relation to a product; and

wherein the step of providing said buyer with access includes filtering said aggregated catalog based upon said entitlement information.

5. The method of claim 4, further including:

receiving a buyer request for said product; and

wherein said step of filtering includes identifying hosted supplier stores offering said product, identifying eligible contracts within said identified hosted supplier stores, retrieving entitlement information from said eligible contracts, and applying said retrieved entitlement information, wherein said entitlement information includes pricing.

6. The method of claim 1, further including the steps of:

providing said buyer with trading mechanisms for generating orders for items within said aggregated catalog;

developing requests for quotations for made-to-order items; and

negotiating contracts between said suppliers and said buyers.

7. A computer program having a computer-readable medium tangibly embodying computer executable instructions for creating a marketplace with hosted supplier stores, the computer executable instructions comprising:

computer executable tools for creating and managing a hosted supplier store through a commerce site, said tools including a catalog facility for uploading and managing a supplier catalog for said hosted supplier store;

computer executable instructions for receiving a plurality of supplier catalogs from said plurality of suppliers;

computer executable instructions for aggregating said plurality of supplier catalogs into an aggregated catalog; and

computer executable instructions for providing a buyer with access to said aggregated catalog and separate access to at least one of said plurality of supplier catalogs on said commerce site.

8. The computer program of claim 7, further including:

computer executable instructions defining a supplier hub catalog topology; and

wherein said computer executable instructions for aggregating include computer executable instructions for aggregating said supplier catalogs according to said supplier hub catalog topology.

9. The computer program of claim 7, wherein:

said supplier catalogs include shared marketplace products and supplier-specific products;

said buyer accesses said aggregated catalog through one of said hosted supplier stores owned by one of said suppliers; and

said computer executable instructions for aggregating include computer executable instructions for aggregating said shared marketplace products from all of said suppliers with said supplier-specific products from said one of said suppliers.

10. The computer program of claim 7, further including:

computer executable instructions for receiving contract data from one of said suppliers, said contract data including entitlement information for said buyer in relation to a product; and

wherein said computer executable instructions for providing said buyer access to said aggregated catalog includes computer executable instructions for filtering said aggregated catalog based upon said entitlement information.

11. The computer program of claim 10, further including:

computer executable instructions for receiving a buyer request for said product; and

wherein said computer executable instructions for filtering include computer executable instructions for identifying hosted supplier stores offering said product, identifying eligible contracts within said identified hosted supplier stores, retrieving entitlement information from said eligible contracts, and applying said retrieved entitlement information, wherein said entitlement information includes pricing.

12. The computer program of claim 7, further including the steps of:

computer executable instructions for providing said buyer with trading mechanisms for generating orders for items within said aggregated catalog;

developing requests for quotations for made-to-order items; and

negotiating contracts between said suppliers and said buyers.

13. A system for online commerce between multiple buyers and multiple suppliers, the system comprising:

a member subsystem for registering buyers and suppliers, whereby registered buyers are permitted to access said system for online commerce, and registered suppliers are permitted to access said system to create and manage a hosted supplier store;

a database having stored thereon a plurality of supplier catalogs uploaded by said registered suppliers for a plurality of said hosted supplier stores;

a catalog subsystem for aggregating said plurality of supplier catalogs into an aggregated catalog; and

an application server for providing said registered buyers with access to said aggregated catalog and separate access to at least one of said plurality of supplier catalogs on said commerce site.

14. The system of claim 13, wherein said database further includes a defined supplier hub catalog topology, and wherein said catalog subsystem aggregates said supplier catalogs according to said supplier hub catalog topology.

15. The system of claim 13, wherein:

said supplier catalogs include shared marketplace products and supplier-specific products;

said registered buyer accesses said aggregated catalog through one of said hosted supplier stores owned by one of said registered suppliers; and

said catalog subsystem aggregates said shared marketplace products from all of said registered suppliers with said supplier-specific products from said one of said registered suppliers.

16. The system of claim 13, further comprising:

a contracts subsystem including contract data received from one of said registered suppliers, said contract data including entitlement information for said registered buyer in relation to a product; and

wherein said contract subsystem filters said aggregated catalog based upon said entitlement information before said application server provides said registered buyer with access to said filtered aggregated catalog.

17. The system of claim 16, wherein said entitlement information includes item pricing information.

18. The system of claim 13, further comprising a trading subsystem providing a transaction mechanism adapted for said registered buyers to generate orders for items within said aggregated catalog, develop requests for quotations for made-to-order items, and to negotiate contracts with said suppliers.

19. An online marketplace for commerce between multiple buyers and multiple suppliers, said online marketplace comprising:

a plurality of hosted supplier stores each managed by a respective registered supplier, said hosted supplier stores each including a supplier catalog containing a hierarchy of categories, products, and saleable items uploaded by said respective registered supplier;

an aggregated catalog containing a hierarchy of categories, products, and items that includes an aggregation of said supplier catalogs;

trading mechanisms, including item ordering and requests for quotations for items;

a supplier hub through which a registered buyer browses said aggregated catalog and utilizes said trading mechanisms; and

a supplier store through which the registered buyer browses the supplier catalog.

20. The online marketplace of claim 19, further including:

a plurality of contracts between registered buyers and registered suppliers, each of said contracts including entitlement information for one of said registered buyer in relation to a product of one of said registered suppliers; and

an entitlement-based filter for filtering said aggregated catalog based upon said entitlement information for a selected registered buyer, thereby enforcing one of said contracts.

IX. EVIDENCE APPENDIX

No evidence submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the Examiner has been relied upon by Appellants in this Appeal, and thus no evidence is attached hereto.

X. RELATED PROCEEDINGS APPENDIX

Since Appellants are unaware of any related appeals and interferences, no decision rendered by a court or the Board is attached hereto.